

Applicant : Michel Lesimple  
Patent No. : 5,800,057  
Issued : September 1, 1998  
Serial No. : 09/648,588  
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### REMARKS

The remarks that follow address issues in the order that they appear in the office action.

#### Reissue Declaration

A supplemental declaration is attached. Applicant submits that the rejection under 35 U.S.C. §251 can be withdrawn.

#### Drawings

Formal drawings will be submitted upon allowance if required.

The office action objected to the drawings for failure to show the subject matter of claims 16, 33, and 44, which recite a single downwardly extending arm. The specification text expressly teaches in the description of the preferred embodiments the use of only one arm for preventing rotation (for example, col. 4, lines 14-16). Drawing Fig. 2 is a side view of a particular embodiment. In this view, only a single arm is visible. Applicant submits that further figures are not essential. Reconsideration of the drawing objection is requested.

#### Recapture

Claims 38, 39, 40, 42/40/39/38, 44/42/40/39/38, 45/42/40/39/38, 42/39/38, 44/42/39/38, 45/42/39/38 and 47 were rejected under the recapture rule. The only independent claim is claim 38. Relying on In re Clement 131 F.3d 1464 (Fed. Cir. 1997), the rejection reasons that claim 38 recaptures subject matter from claims 15 and 20 of the original prosecution, which were amended. Applicants traverse.

According to Clement, the recapture rule is violated only when the broader aspects of a reissue claim cover subject matter that was "surrendered" during the original prosecution. Id. at 1469. Id.; Seattle Box Co. v. Industrial Crating & Packing, Inc., 731 F.2d 818, 826 (Fed. Cir. 1984) (recapture rule does not apply absent evidence that claim amendment was an admission that the scope of that claim was not in fact patentable.)

To determine whether the broader aspects were surrendered, we look to the prosecution history for arguments and changes to the claims made to overcome a prior art rejection (emphasis ours):

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The second step is to determine whether the broader aspects of the reissue claims relate to surrendered subject matter. To determine whether an applicant surrendered particular subject matter, we look to the prosecution history for arguments and changes to the claims made in an effort to overcome a prior art rejection. In re Clement 131 F.3d 1464, 1468.

In the present case, originally filed claims 15 and 20 were not amended during the original prosecution to overcome a prior art rejection. To the contrary, the subject matter of originally filed claims 15 and 20 was indicated as allowable in the first office action (see Paper No. 4, page 6, paragraph 17). Claim 15 was amended for clarification in response to an indefiniteness objection, but there was no prior art rejection. As a result, there could not have been any surrender and the recapture rule does not apply.

Applicant submits that the rejections based on the recapture rule can be withdrawn.

35 U.S.C. §112, Second Paragraph

Formal amendments have been made to claims 15, 24, 25, 27, 29, 32, 38, 42, 43, 48, 49 and 50, without narrowing their scope.

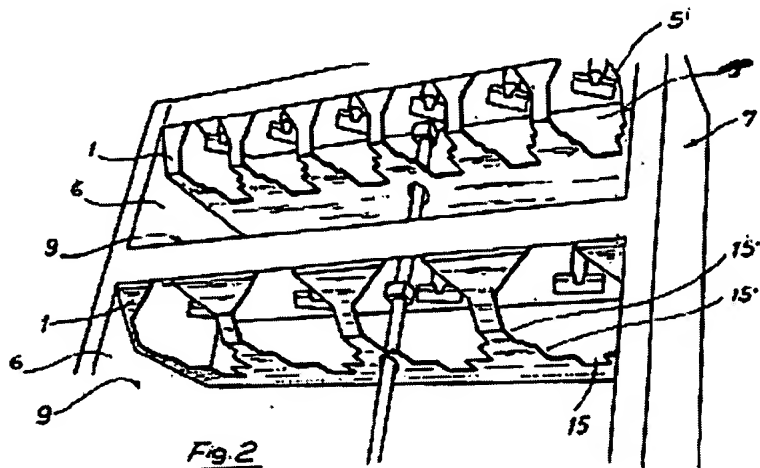
35 U.S.C. §§ 102 and 103

The new independent claims are claims 15, 29, 38, and 47. All of these claims were rejected as anticipated by Neri. The Neri reference was also cited in an obviousness rejection directed to dependent claim 31. Applicants traverse.

Neri describes a can receiving plate that defines a female part shaped to receive a paint can cover and lock it into place. Referring to Fig 2, below, Neri illustrates a contoured plate 1 including an opening that defines a series of rectangular seats 15, 15', 15'' with specific widths.

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Referring to Fig. 5, below, the innermost seat 15 receives a locking element 16 and the other seats receive other features on a paint can cover.

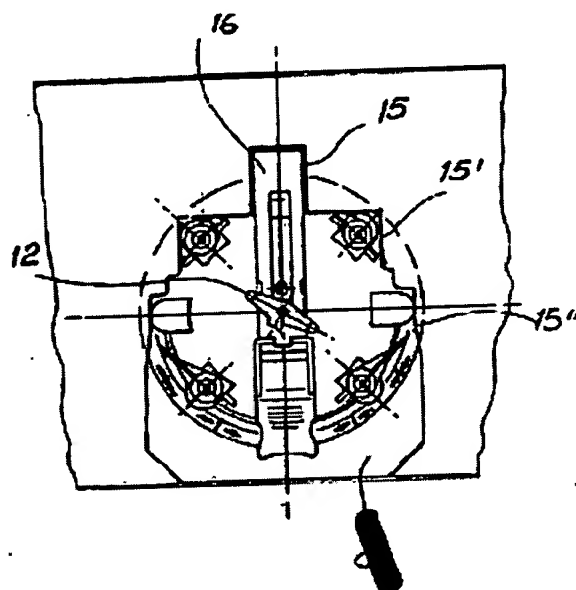


Fig. 5

The present independent claims, on the other hand, include an interference arm to prevent rotation. Neri does not describe an interference arm. As a result, it is submitted that the anticipation rejection based on Neri should be withdrawn.

Nor could Neri suggest the inventions of the present claims or their advantages. For example, in the configuration described by Neri, careful alignment of the can cover and receiving plate is required to insert the cover and interlock with the seating surfaces of the plate. In addition, the seating surfaces must be sized and positioned to match the paint can (e.g. col. 3, lines 1-5) or shim elements must be used (col. 2, lines 61-64). By contrast, an interference arm does not require such careful alignment when placing cans on the shelf for stirring.

Allowance is requested.

Attached is a marked-up version of the changes being made by the current amendment.

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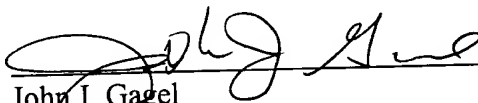
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Applicant asks that all claims be allowed. Enclosed is a \$185.00 check for excess claim fees and a \$200.00 check for the Petition for Extension of Time fee. Please apply any other charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: \_\_\_\_\_

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**Version with markings to show changes made**

**In the claims:**

Claims 15, 24, 25, 27, 29, 32, 38, 42, 43, 48, 49, 50 have been amended as follows:

15. A system for stirring paint in a can, comprising:  
a can cover with a paint stirrer that [extends into the can an] includes a rotatable drive shaft;  
a can support shelf [for supporting the can];  
a stirring head positioned above the shelf, and  
an [downwardly extending] interference arm extending downwardly toward the shelf that [prevents rotation of the can as the stirrer rotates by intefering] interferes with the cover to prevent rotation of the cover as the stirrer rotates.

24. The system of claim 21 wherein the engaging [portion] member is connected to a downwardly extending [neck]-body.

25. The system of claim 24 wherein the interference [member] arm is connected to the [neck] body adjacent the engaging [portion] member.

27. The system of claim 26 wherein the upper shaft portion includes a plate and the engaging [portion] member engages the plate.


29. A system for stirring paint in a can, comprising:  
a can cover with a paint stirrer that [extends into the can and] includes a rotatable drive shaft;  
a can support shelf [for supporting the can]; and

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a stirring head positioned above the shelf, the stirring head comprising a body including a [downwardly extending] interference arm that extends downwardly toward the shelf that prevents rotation of the [can] cover as the stirrer rotates by interfering with the cover and an engaging member for engaging a portion of the drive shaft extending above the can cover.

32. The system of claim 31 wherein the shaft portion includes a plate with upwardly extending fingers and the stirring head including a driver with a blade actuatable with the fingers to effect rotation, and the engaging [portion] member engages the plate.

 38. A paint stirring head body that can be positioned above a paint can cover including a rotatable drive shaft, the body comprising a downwardly extending interference arm arranged to [engage] interfere with the can cover to prevent rotation of the [can] cover as the [stirrer] drive shaft rotates. *lid clamp?*

42. The body of any of claims 39 to 41 wherein the engaging [portion] member is connected to a [neck] body.

43. The body of claim 42 wherein the interference arm is connected to the [neck element] body adjacent the engaging member.

46. The body of claim 44 wherein the interference [member] arm engages a pouring spout on the can to prevent rotation.

48. The head of claim 47 wherein the molded body includes [on] an opening for receiving a drive spindle.

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49. The head of claim 48 wherein the molded body includes a [neck portion]  
downwardly extending body portion from which extends the interference arm and the engaging  
portion.

50. The head of claim 49 wherein the engaging [portion] member comprises a circle-  
portion in alignment with the drive spindle opening.